

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

## SENATE ENROLLED ACT No. 353

AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 5-28-6-3, AS ADDED BY P.L.191-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007]: Sec. 3. (a) The general assembly declares that the opportunity for the participation of underutilized small businesses, especially women and minority business enterprises, in the biodiesel and ethanol production industries is essential if social and economic parity is to be obtained by women and minority business persons and if the economy of Indiana is to be stimulated as contemplated by this section, IC 6-3.1-27, and IC 6-3.1-28. A recipient of a credit under this chapter is encouraged to purchase goods and services from underutilized small businesses, especially women and minority business enterprises.

(b) The definitions in IC 6-3.1-27 and IC 6-3.1-28 apply throughout this section. A term used in this section that is defined in both IC 6-3.1-27 and IC 6-3.1-28 refers to the term as defined in:

- (1) IC 6-3.1-27 whenever this section applies to the certification of a person for a credit under IC 6-3.1-27; and
- (2) IC 6-3.1-28 whenever this section applies to the certification of a person for a credit under IC 6-3.1-28.

In addition, as used in this section, "person" refers to a taxpayer or a pass through entity.

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(c) As used in this section, "minority" means a member of a minority group (as defined in IC 4-13-16.5-1).

(d) As used in this section, "minority business enterprise" has the meaning set forth in IC 4-13-16.5-1.

(e) As used in this section, "women's business enterprise" has the meaning set forth in IC 4-13-16.5-1.3.

(f) A person that:

(1) begins construction of a facility or an expansion of a facility for the production of biodiesel, blended biodiesel, or ethanol in Indiana after February 28, 2005; and

(2) wishes to claim a tax credit with respect to that facility or the expansion of a facility under any combination of IC 6-3.1-27-8, IC 6-3.1-27-9, or IC 6-3.1-28-7;

must apply to the corporation for a determination of the person's eligibility for the tax credit.

(g) Subject to this section, the corporation shall issue to each qualifying applicant a certification that:

(1) certifies the person as eligible for the tax credits for which the person applied;

(2) identifies the facilities covered by the certification; and

(3) allocates to the person ~~the lesser of:~~

~~(A) the maximum allowable a credit for which the person is eligible under IC 6-3.1-27-8, IC 6-3.1-27-9, or IC 6-3.1-28-11.~~  
or

~~(B) a credit equal to the level of production demonstrated as economically viable under the business plan submitted to the corporation by the person.~~

(h) To qualify for certification under subsection (g), a person must do the following:

(1) Submit an application for the credit on the forms and in the manner prescribed by the corporation for the credit that is the subject of the application.

(2) Demonstrate through a business plan and other information presented to the corporation that the level of production proposed by the person is feasible and economically viable. In making a determination under this subdivision, the corporation shall consider:

(A) whether the person is sufficiently capitalized to complete the project;

(B) the person's credit rating;

(C) whether the person has sufficient technical expertise to build and operate a facility; and

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(D) other relevant financial information as determined by the corporation.

(i) The corporation shall record the time of filing of each application submitted under this section. The corporation shall grant certifications under this section to qualifying applicants in the chronological order in which the applications for the same type of credit are filed until the maximum allowable credit for that type of credit is fully allocated.

(j) The corporation may terminate a certification or reduce an allocation of a credit granted under this section only if the corporation determines, after a hearing, that the person granted the certification or allocation has failed to:

- (1) substantially comply with the business plan that is the basis for the certification or allocation; or
- (2) submit the information needed by the corporation to determine whether the person has substantially complied with the business plan that is the basis of the certification or allocation.

If an allocation of a credit is terminated or reduced, the unused credit becomes available for allocation to other qualifying applicants in the chronological order in which the applications for the same type of credit are filed until the maximum allowable credit for that type of credit is fully allocated. The corporation may approve an amendment to a business plan or a transfer of a certificate of eligibility in conformity with the terms and conditions specified by the corporation in rules adopted by the corporation under IC 4-22-2.

(k) The corporation shall give the department of state revenue written notice of each action taken under this section.

SECTION 2. IC 6-2.5-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. **For purposes of (a) The definitions in this section apply throughout this chapter:**

(b) "Kerosene" has the same meaning as the definition contained in IC 16-44-2-2.

(c) "Gasoline" has the same meaning as the definition contained in IC 6-6-1.1-103.

(d) "Special fuel" has the same meaning as the definition contained in IC 6-6-2.5-22.

(e) **"E85" has the meaning set forth in IC 6-6-1.1-103.**

(f) "Unit" means the unit of measure, such as a gallon or a liter, by which gasoline or special fuel is sold.

(g) "Metered pump" means a stationary pump which is capable of metering the amount of gasoline or special fuel dispensed from it and which is capable of simultaneously calculating and displaying the price of the gasoline or special fuel dispensed.

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- (h) "Indiana gasoline tax" means the tax imposed under IC 6-6-1.1.
- (i) "Indiana special fuel tax" means the tax imposed under IC 6-6-2.5.
- (j) "Federal gasoline tax" means the excise tax imposed under Section 4081 of the Internal Revenue Code.
- (k) "Federal special fuel tax" means the excise tax imposed under Section 4041 of the Internal Revenue Code.
- (l) "Price per unit before the addition of state and federal taxes" means an amount which equals the remainder of:
- (i) the total price per unit; minus
  - (ii) the state gross retail, Indiana gasoline or special fuel, and federal gasoline or special fuel taxes which are part of the total price per unit.
- (m) "Total price per unit" means the price per unit at which gasoline or special fuel is actually sold, including the state gross retail, Indiana gasoline or special fuel, and federal gasoline or special fuel taxes which are part of the sales price.
- (n) "Distributor" means a person who is the first purchaser of gasoline from a refiner, a terminal operator, or supplier, regardless of the location of the purchase.
- (o) "Prepayment rate" means a rate per gallon of gasoline, rounded to the nearest one-tenth of one cent (\$0.001), determined by the department by determining the product of:
- (1) the statewide average retail price per gallon of gasoline, excluding the Indiana and federal gasoline taxes and the Indiana gross retail tax; multiplied by
  - (2) the state gross retail tax rate; multiplied by
  - (3) ninety percent (90%).
- (p) "Purchase or shipment" means a sale or delivery of gasoline, but does not include:
- (1) an exchange transaction between refiners, terminal operators, or a refiner and terminal operator; or
  - (2) a delivery by pipeline, ship, or barge to a refiner or terminal operator.
- (q) "Qualified distributor" means a distributor who:
- (1) is a licensed distributor under IC 6-6-1.1; and
  - (2) holds an unrevoked permit issued under section 7 of this chapter.
- (r) "Refiner" means a person who manufactures or produces gasoline by any process involving substantially more than the blending of gasoline.
- (s) "Terminal operator" means a person that:

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- (1) stores gasoline in tanks and equipment used in receiving and storing gasoline from interstate or intrastate pipelines pending wholesale bulk reshipment; or
- (2) stores gasoline at a boat terminal transfer that is a dock or tank, or equipment contiguous to a dock or tank, including equipment used in the unloading of gasoline from a ship or barge and used in transferring the gasoline to a tank pending wholesale bulk reshipment.

SECTION 3. IC 6-2.5-7-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. (a) Each retail merchant who dispenses gasoline or special fuel from a metered pump shall, in the manner prescribed in IC 6-2.5-6, report to the department the following information:

- (1) The total number of gallons of gasoline sold from a metered pump during the period covered by the report.
- (2) The total amount of money received from the sale of gasoline described in subdivision (1) during the period covered by the report.
- (3) That portion of the amount described in subdivision (2) which represents state and federal taxes imposed under this article, IC 6-6-1.1, or Section 4081 of the Internal Revenue Code.
- (4) The total number of gallons of special fuel sold from a metered pump during the period covered by the report.
- (5) The total amount of money received from the sale of special fuel during the period covered by the report.
- (6) That portion of the amount described in subdivision (5) that represents state and federal taxes imposed under this article, IC 6-6-2.5, or Section 4041 of the Internal Revenue Code.
- (7) The total number of gallons of E85 sold from a metered pump during the period covered by the report.**

(b) Concurrently with filing the report, the retail merchant shall remit the state gross retail tax in an amount which equals five and sixty-six hundredths percent (5.66%) of the gross receipts, including state gross retail taxes but excluding Indiana and federal gasoline and special fuel taxes, received by the retail merchant from the sale of the gasoline and special fuel that is covered by the report and on which the retail merchant was required to collect state gross retail tax. The retail merchant shall remit that amount regardless of the amount of state gross retail tax which he has actually collected under this chapter. However, the retail merchant is entitled to deduct and retain the amounts prescribed in subsection (c), IC 6-2.5-6-10, and IC 6-2.5-6-11.

(c) A retail merchant is entitled to deduct from the amount of state

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gross retail tax required to be remitted under subsection (b) ~~an~~ **the**  
amount ~~equal to:~~ **determined under STEP THREE of the following**  
**formula:**

**STEP ONE: Determine:**

- ~~(1)~~ **(A)** the sum of the prepayment amounts made during the period covered by the retail merchant's report; minus
- ~~(2)~~ **(B)** the sum of prepayment amounts collected by the retail merchant, in the merchant's capacity as a qualified distributor, during the period covered by the retail merchant's report.

**STEP TWO: Subject to subsection (d), for reporting periods ending before July 1, 2008, determine the product of:**

- (A)** ten cents (\$0.10); multiplied by
- (B)** the number of gallons of E85 sold at retail by the retail merchant during the period covered by the retail merchant's report.

**STEP THREE: Add the amounts determined under STEPS ONE and TWO.**

For purposes of this section, a prepayment of the gross retail tax is presumed to occur on the date on which it is invoiced.

**(d) The total amount of deductions allowed under subsection (c) STEP TWO may not exceed two million dollars (\$2,000,000) for all retail merchants in all reporting periods. A retail merchant is not required to apply for an allocation of deductions under subsection (c) STEP TWO. If the department determines that the sum of:**

- (1)** the deductions that would otherwise be reported under subsection (c) STEP TWO for a reporting period; plus
- (2)** the total amount of deductions granted under subsection (c) STEP TWO in all preceding reporting periods;

**will exceed two million dollars (\$2,000,000), the department shall publish in the Indiana Register a notice that the deduction program under subsection (c) STEP TWO is terminated after the date specified in the notice and that no additional deductions will be granted for retail transactions occurring after the date specified in the notice.**

SECTION 4. IC 6-3.1-27-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006 (RETROACTIVE)]:  
Sec. 1. As used in this chapter, "biodiesel" means a renewable, biodegradable, mono alkyl ester combustible liquid fuel derived from agricultural plant oils or animal fats that meets American Society for Testing and Materials specification ~~D6751-02~~ **D6751-03a Standard Specification** for Biodiesel Fuel (B100) Blend Stock **for** Distillate Fuels.



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SECTION 5. IC 6-3.1-27-8, AS AMENDED BY P.L.191-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) Subject to section 9.5 of this chapter, a taxpayer that has been certified by the corporation as eligible for a credit under this section and produces biodiesel at a facility located in Indiana is entitled to a credit against the taxpayer's state tax liability equal to the product of:

- (1) one dollar (\$1); multiplied by
- (2) the number of gallons of biodiesel:
  - (A) produced at the Indiana facility during the taxable year; and
  - (B) used to produce blended biodiesel.

(b) **The corporation shall determine the maximum amount of credits that a taxpayer (or, if the person producing the biodiesel is a pass through entity, the shareholders, partners, or members of the pass through entity) is eligible to receive under this section.** The total amount of credits ~~allowed that the corporation may grant to a taxpayer (or, if the person producing the biodiesel is a pass through entity, the shareholders, partners, or members of the pass through entity) under this section may not exceed three million dollars (\$3,000,000) for all taxable years.~~

(c) Notwithstanding subsection (b), the total amount of credits allowed a taxpayer (or if the person producing biodiesel is a pass through entity, the shareholders, partners, or members of the pass through entity) may be increased to an amount not to exceed a total of five million dollars (\$5,000,000) for all taxable years with the prior approval of the Indiana economic development corporation.

SECTION 6. IC 6-3.1-27-9, AS AMENDED BY P.L.191-2005, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006 (RETROACTIVE)]: Sec. 9. (a) Subject to section 9.5 of this chapter, a taxpayer that has been certified by the corporation as eligible for a credit under this section and produces blended biodiesel at a facility located in Indiana is entitled to a credit against the taxpayer's state tax liability equal to the product of:

- (1) two cents (\$0.02); multiplied by
- (2) the number of gallons of blended biodiesel:
  - (A) produced at the Indiana facility; and
  - (B) blended with biodiesel produced at a facility located in Indiana.

(b) **The corporation shall determine the maximum amount of credits that a taxpayer (or, if the person producing the blended biodiesel is a pass through entity, the shareholders, partners, or**

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**members of the pass through entity) is eligible to receive under this section.** The total amount of credits ~~allowed that the corporation may grant to~~ a taxpayer (or, if the person producing the blended biodiesel is a pass through entity, the shareholders, partners, or members of the pass through entity) under this section may not exceed three million dollars (\$3,000,000) for all taxable years.

SECTION 7. IC 6-3.1-27-9.5, AS ADDED BY P.L.191-2005, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]: Sec. 9.5. The total amount of credits allowed under:

- (1) section 8 of this chapter;
- (2) section 9 of this chapter; and
- (3) IC 6-3.1-28;

may not exceed ~~twenty~~ **twenty five** million dollars ~~(\$20,000,000)~~ **(\$50,000,000)** for all taxpayers and all taxable years **beginning after December 31, 2004.** The corporation shall determine the maximum allowable amount for each type of credit, which must be at least four million dollars (\$4,000,000) for each **type of** credit.

SECTION 8. IC 6-3.1-27-10, AS AMENDED BY P.L.191-2005, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006 (RETROACTIVE)]: Sec. 10. **(a)** A taxpayer that:

- (1) is a dealer; and
- (2) distributes at retail blended biodiesel in a taxable year;

is entitled to a credit against the taxpayer's state tax liability.

**(b)** The amount of the credit allowed under this section is the product of:

- (1) one cent (\$0.01); multiplied by
- (2) the total number of gallons of blended biodiesel distributed at retail by the taxpayer in a taxable year.

**(c)** The total amount of credits allowed under this section may not exceed one million dollars (\$1,000,000) for all taxpayers and all taxable years.

**(d)** A credit under this section may not be taken for blended biodiesel distributed at retail after December 31, ~~2006~~ **2010.**

SECTION 9. IC 6-3.1-28-11, AS AMENDED BY P.L.191-2005, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. ~~(a)~~ **The corporation shall determine the maximum amount of credits that a taxpayer (or if the person producing the ethanol is a pass through entity, the shareholders, partners, or members of the pass through entity) is eligible to receive under this section.** The total amount of credits allowed a taxpayer (or, if the person producing the ethanol is a pass through

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entity, the shareholders, partners, or members of the pass through entity) under this chapter may not exceed a total of ~~three million dollars (\$3,000,000)~~ **the following amounts** for all taxable years:

- (1) **Two million dollars (\$2,000,000) in the case of a taxpayer who produces at least forty million (40,000,000) but less than sixty million (60,000,000) gallons of ethanol in a taxable year.**
- (2) **Three million dollars (\$3,000,000) in the case of a taxpayer who produces at least sixty million (60,000,000) gallons of ethanol in a taxable year.**

(b) Notwithstanding subsection (a), the total amount of credits allowed a taxpayer (or if the person producing ethanol is a pass through entity, the shareholders, partners, or members of the pass through entity) may be increased to an amount not to exceed a total of five million dollars (\$5,000,000) for all taxable years with the prior approval of the Indiana economic development corporation.

SECTION 10. IC 6-3.1-29-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006 (RETROACTIVE)]: **Sec. 4.5. As used in this chapter, "fluidized bed combustion technology" means a technology that involves the combustion of fuel in connection with a bed of inert material, such as limestone or dolomite, which is held in a fluid like state by the means of air or other gasses being passed through the materials.**

SECTION 11. IC 6-3.1-29-10, AS ADDED BY P.L.191-2005, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006 (RETROACTIVE)]: **Sec. 10. As used in this chapter, "qualified investment" means a taxpayer's expenditures for:**

- (1) all real and tangible personal property incorporated in and used as part of an integrated coal gasification powerplant **or a fluidized bed combustion technology**; and
- (2) transmission equipment and other real and personal property located at the site of an integrated coal gasification powerplant **or a fluidized bed combustion technology** that is employed specifically to serve the integrated coal gasification powerplant **or fluidized bed combustion technology.**

SECTION 12. IC 6-3.1-29-14, AS ADDED BY P.L.191-2005, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006 (RETROACTIVE)]: **Sec. 14. (a) A taxpayer that:**

- (1) is awarded a tax credit under this chapter by the corporation; and
- (2) complies with the conditions set forth in this chapter and the agreement entered into by the corporation and the taxpayer under

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this chapter;  
is entitled to a credit against the taxpayer's state tax liability for a taxable year in which the taxpayer places into service an integrated coal gasification powerplant **or a fluidized bed combustion technology** and for the taxable years provided in section 16 of this chapter.

(b) A tax credit awarded under this chapter must be applied against the taxpayer's state tax liability in the following order:

- (1) Against the taxpayer's liability incurred under IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax).
- (2) Against the taxpayer's liability incurred under IC 6-5.5 (the financial institutions tax).
- (3) Against the taxpayer's liability incurred under IC 27-1-18-2 (the insurance premiums tax).
- (4) Against the taxpayer's liability incurred under IC 6-2.3 (the utility receipts tax).

SECTION 13. IC 6-3.1-29-15, AS ADDED BY P.L.191-2005, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006 (RETROACTIVE)]: Sec. 15. (a) Subject to section 16 of this chapter, the amount of the credit to which a taxpayer is entitled **for a qualified investment in an integrated coal gasification powerplant** is equal to the sum of the following:

- (1) Ten percent (10%) of the taxpayer's qualified investment for the first five hundred million dollars (\$500,000,000) invested.
- (2) Five percent (5%) of the amount of the taxpayer's qualified investment that exceeds five hundred million dollars (\$500,000,000) **only if the facility is dedicated primarily to serving Indiana retail electric utility consumers.**

(b) Subject to section 16 of this chapter, the amount of the credit to which a taxpayer is entitled **for a qualified investment in a fluidized bed combustion technology** is equal to the sum of the following:

- (1) **Seven percent (7%) of the taxpayer's qualified investment for the first five hundred million dollars (\$500,000,000) invested.**
- (2) **Three percent (3%) of the amount of the taxpayer's qualified investment that exceeds five hundred million dollars (\$500,000,000).**

SECTION 14. IC 6-3.1-29-16, AS ADDED BY P.L.191-2005, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006 (RETROACTIVE)]: Sec. 16. (a) A credit awarded under section 15 of this chapter must be taken in ten (10) annual installments, beginning with the year in which the taxpayer places into

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service an integrated coal gasification powerplant **or a fluidized bed combustion technology.**

(b) Subject to section 20 of this chapter, the amount of an annual installment of the credit awarded under section 15 of this chapter is equal to the amount determined in the last of the following STEPS:

STEP ONE: Determine the lesser of:

(A) the credit amount determined under section 15 of this chapter, divided by ten (10); or

(B) the greater of:

(i) the taxpayer's total state tax liability for the taxable year, multiplied by twenty-five percent (25%); or

(ii) the taxpayer's liability for the utility receipts tax imposed under IC 6-2.3 for the taxable year.

STEP TWO: Multiply the STEP ONE amount by the percentage of Indiana coal used in the taxpayer's integrated coal gasification powerplant **or fluidized bed combustion technology** in the taxable year for which the annual installment of the credit is allowed.

(c) If the credit allowed by this chapter is available to a member of an affiliated group of corporations filing a consolidated return under IC 6-2.3-6-5 or IC 6-3-4-14, the credit shall be applied against the state tax liability of the affiliated group.

SECTION 15. IC 6-3.1-29-17, AS ADDED BY P.L.191-2005, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006 (RETROACTIVE)]: Sec. 17. A person that proposes to place a new integrated coal gasification powerplant **or fluidized bed combustion technology** into service may apply to the corporation before the taxpayer makes the qualified investment to enter into an agreement for a tax credit under this chapter. The corporation shall prescribe the form of the application.

SECTION 16. IC 6-3.1-29-19, AS ADDED BY P.L.191-2005, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006 (RETROACTIVE)]: Sec. 19. (a) The corporation shall enter into an agreement with an applicant that is awarded a credit under this chapter. The agreement must include all the following:

- (1) A detailed description of the project that is the subject of the agreement.
- (2) The first taxable year for which the credit may be claimed.
- (3) The maximum tax credit amount that will be allowed for each taxable year.
- (4) A requirement that the taxpayer shall maintain operations at the project location for at least ten (10) years during the term that

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the tax credit is available.

(5) **If the facility is an integrated coal gasification powerplant**, a requirement that the taxpayer shall pay an average wage to its employees at the integrated coal gasification powerplant, other than highly compensated employees, in each taxable year that a tax credit is available, that equals at least one hundred twenty-five percent (125%) of the average county wage in the county in which the integrated coal gasification powerplant is located.

(6) **For a project involving a qualified investment in a coal gasification powerplant**, a requirement that the taxpayer will maintain at the location where the qualified investment is made, during the term of the tax credit, a total payroll that is at least equal to the payroll that existed on the date that the taxpayer placed the integrated coal gasification powerplant into service.

(7) A requirement that:

(A) **one hundred percent (100%) of the coal used:**

(i) **at the integrated coal gasification powerplant, for a project involving a qualified investment in an integrated coal gasification powerplant; or**

(ii) **as fuel in a fluidized bed combustion unit, in a project involving a qualified investment in a fluidized bed combustion technology, if the unit is dedicated primarily to serving Indiana retail electric utility consumers;**

**must be Indiana coal; or**

(B) **seventy-five percent (75%) of the coal used as fuel in a fluidized bed combustion unit must be Indiana coal, in a project involving a qualified investment in a fluidized bed combustion technology, if the unit is not dedicated primarily to serving Indiana retail electric utility consumers. the taxpayer shall use Indiana coal at the taxpayer's integrated coal gasification powerplant.**

(8) A requirement that the taxpayer obtain from the commission a determination under IC 8-1-8.5-2 that public convenience and necessity require, or will require:

(A) **the construction of the taxpayer's integrated coal gasification powerplant, in the case of a project involving a qualified investment in an integrated coal gasification powerplant; or**

(B) **the installation of the taxpayer's fluidized bed combustion unit, in the case of a project involving a qualified investment in a fluidized bed combustion technology.**

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(b) A taxpayer must comply with the terms of the agreement described in subsection (a) to receive an annual installment of the tax credit awarded under this chapter. The corporation shall annually determine whether the taxpayer is in compliance with the agreement. If the corporation determines that the taxpayer is in compliance, the corporation shall issue a certificate of compliance to the taxpayer.

SECTION 17. IC 6-3.1-29-20, AS ADDED BY P.L.191-2005, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006 (RETROACTIVE)]: Sec. 20. (a) This section applies if a qualified investment is made by a pass through entity or by taxpayers who are co-owners of an integrated coal gasification powerplant **or a fluidized bed combustion technology**.

(b) If the credit allowed by this chapter for a taxable year is greater than the state tax liability of the pass through entity against which the tax credit may be applied, a shareholder, partner, or member of the pass through entity is entitled to a tax credit equal to:

- (1) the tax credit determined for the pass through entity for the taxable year in excess of the pass through entity's state tax liability for the taxable year; multiplied by
- (2) in the case of a pass through entity described in:
  - (i) section 9(1), 9(2), 9(3), or 9(4) of this chapter, the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled; and
  - (ii) section 9(5) or 9(6) of this chapter, the relative percentage of the corporation's patronage dividends allocable to the member for the taxable year.

(c) If an integrated coal gasification powerplant **or a fluidized bed combustion technology** is co-owned by two (2) or more taxpayers, the amount of the credit that may be allowed to a co-owner in a taxable year is equal to:

- (1) the tax credit determined under sections 15 and 16 of this chapter with respect to the total qualified investment in the integrated coal gasification powerplant **or fluidized bed combustion technology**; multiplied by
- (2) the co-owner's percentage of ownership in the integrated coal gasification powerplant **or fluidized bed combustion technology**.

(d) The amount of an annual installment of the credit allowed to a shareholder, partner, or member of a pass through entity or a co-owner shall be determined under section 16 of this chapter modified as follows:

- (1) Section 16(b) STEP ONE (A) of this chapter shall be based on

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the percentage of the credit allowed to the shareholder, partner, member, or co-owner under this section.

(2) Section 16(b) STEP ONE (B) of this chapter shall be based on the:

- (A) state tax liability; or
- (B) utilities receipts tax liability;

of the shareholder, partner, member, or co-owner.

SECTION 18. IC 6-6-1.1-103 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006 (RETROACTIVE)]:  
Sec. 103. As used in this chapter:

- (a) "Administrator" means the administrative head of the department of state revenue or the administrator's designee.
- (b) "Dealer" means a person, except a distributor, engaged in the business of selling gasoline in Indiana.
- (c) "Department" means the department of state revenue.
- (d) "Distributor" means a person who first receives gasoline in Indiana. However, "distributor" does not include the United States or any of its agencies unless their inclusion is permitted under the Constitution and laws of the United States.
- (e) "Licensed distributor" means a person holding a valid distributor's license issued by the administrator.
- (f) "Marine facility" means a marina or boat livery.
- (g) "Gasoline" means:

- (1) all products commonly or commercially known or sold as gasoline, including casinghead and absorption or natural gasoline, regardless of their classifications or uses; and
- (2) any liquid, which when subjected to distillation of gasoline, naphtha, kerosene, and similar petroleum products with American Society for Testing Materials Designation D-86, shows not less than ten percent (10%) distilled (recovered) below three hundred forty-seven degrees Fahrenheit (347 degrees F) or one hundred seventy-five degrees Centigrade (175 degrees C), and not less than ninety-five percent (95%) distilled (recovered) below four hundred sixty-four degrees Fahrenheit (464 degrees F) or two hundred forty degrees Centigrade (240 degrees C).

However, the term "gasoline" does not include liquefied gases which would not exist as liquids at a temperature of sixty degrees Fahrenheit (60 degrees F) or sixteen degrees Centigrade (16 degrees C), and a pressure of fourteen and seven-tenths (14.7) pounds per square inch absolute, or denatured, wood, or ethyl alcohol, ether, turpentine, or acetates, unless such product is used

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as an additive in the manufacture, compounding, or blending of a liquid within subdivision (2) **or is otherwise blended with a liquid described in subdivision (2) (including ethanol used in E85)**, in which event only the quantity so used is considered gasoline. In addition, "gasoline" does not include those liquids which meet the specifications of subdivision (2) but which are especially designated for use other than as a fuel for internal combustion engines.

(h) "Motor vehicle" means a vehicle, except a vehicle operated on rails, which is propelled by an internal combustion engine or motor and is designed to permit its mobile use on public highways.

(i) "Person" means a natural person, partnership, firm, association, corporation, limited liability company, representative appointed by a court, or the state or its political subdivisions.

(j) "Public highway" means the entire width between boundary lines of every publicly maintained way in Indiana including streets and alleys in cities and towns when any part of the way is open to public use for vehicle travel.

(k) "Taxable marine facility" means a marine facility located on an Indiana lake.

(l) "Taxicab" means a motor vehicle which is:

- (1) designed to carry not more than seven (7) individuals, including the driver;
- (2) held out to the public for hire at a fare regulated by municipal ordinance and based upon length of trips or time consumed;
- (3) not operated over a definite route; and
- (4) a part of a commercial enterprise in the business of providing taxicab service.

(m) "Terminal" means a marine or pipeline gasoline facility.

(n) "Metered pump" means a stationary pump having a meter that is capable of measuring the amount of gasoline dispensed through it.

(o) "Billed gallons" means the gallons indicated on an invoice for payment to a supplier.

(p) "Export" for gasoline and fuels taxed in the same manner as gasoline under the origin state's statutes means the sale for export and delivery out of a state by or for the seller that is:

- (1) an export by the seller in the origin state; and
- (2) an import by the seller in the destination state.

(q) "Import" for gasoline and fuels taxed in the same manner as

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gasoline under the origin state's statutes means the purchase for export and transportation out of a state by or for the purchaser that is:

- (1) an export by the purchaser in the origin state; and
- (2) an import by the purchaser in the destination state.
- (r) "Rack" means a dock, platform, or open bay:
  - (1) located at a refinery or terminal; and
  - (2) having a system of metered pipes and hoses to load fuel into a tank wagon or tank transport.
- (s) **"E85" means a fuel blend nominally consisting of eighty-five percent (85%) ethanol and fifteen percent (15%) gasoline (as described in subsection (g)(2)) that meets American Society for Testing and Materials standard specification 5798-99 for fuel ethanol for automotive spark-ignition engines (Ed75Ed85).**

SECTION 19. IC 6-6-2.5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. As used in this chapter, "alternative fuel" means a liquefied petroleum gas, compressed natural gas product, or a combination of liquefied petroleum gas and a compressed natural gas product, **not including a biodiesel fuel or biodiesel blend**, used in an internal combustion engine or motor to propel any form of vehicle, machine, or mechanical contrivance. The term includes all forms of fuel commonly or commercially known or sold as butane, propane, or compressed natural gas.

SECTION 20. IC 6-6-2.5-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1.5. (a) As used in this chapter, "biodiesel" means a renewable, biodegradable, mono alkyl ester combustible liquid fuel derived from agricultural plant oils or animal fats that meets American Society for Testing and Materials specifications D6751-03a Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels, as well as other fuels of the same derivation capable of use in the generation of power for the propulsion of a motor vehicle, airplane, or motorboat.

(b) As used in this chapter, "blended biodiesel" means a blend of biodiesel with petroleum diesel fuel so that the volume percentage of biodiesel in the blend is at least two percent (2%). A biodiesel blend may be described as "Bxx" where "xx" represents the volume percentage of biodiesel fuel. "B2" is the type of biodiesel blend with the least volume percentage of biodiesel fuel, and "B99" is the type of biodiesel fuel with the most volume percentage of biodiesel fuel. The term does not include biodiesel

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SECTION 21. IC 6-6-2.5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. As used in this chapter, "blending" means the mixing of one (1) or more petroleum products, with or without another product, ~~regardless of the original character of the product blended;~~ **excluding biodiesel or blended biodiesel**, if the product obtained by the blending is capable of use in the generation of power for the propulsion of a motor vehicle, an airplane, or a motorboat. The term does not include that blending that occurs in the process of refining by the original refiner of crude petroleum or the blending of a de minimis amount of products such as carburetor detergent, oxidation inhibitor, lubricating oil, and greases.

SECTION 22. IC 6-6-2.5-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 22. As used in this chapter, "special fuel" means all combustible gases and liquids that are:

- (1) suitable for the generation of power in an internal combustion engine or motor; or
- (2) used exclusively for heating, industrial, or farm purposes other than for the operation of a motor vehicle.

**Special fuel includes biodiesel and blended biodiesel (as defined in IC 6-6-2.5-1.5).** However, the term does not include gasoline (as defined in IC 6-6-1.1-103), ethanol produced, stored, or sold for the manufacture of or compounding or blending with gasoline, alternative fuels, kerosene, and jet fuel (if the purchaser of the jet fuel has provided to the seller proof of the purchaser's federal jet fuel registration at or before the time of sale).

SECTION 23. IC 15-9-2-4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006 (RETROACTIVE)]: **Sec. 4. The department shall work with automobile manufacturers to improve awareness and labeling of E85 base fuel and shall work with the appropriate companies to include E85 base fuel stations in updates of global positioning navigation software.**

SECTION 24. IC 34-30-24 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

**Chapter 24. Immunity for Misuse of E85 Motor Fuel**

**Sec. 1. (a) As used in this chapter, "E85" has the meaning set forth in IC 6-6-1.1-103.**

**(b) As used in this chapter, "flexible fuel vehicle" means any vehicle that is equipped to operate when fueled entirely by E85.**

**(c) As used in this chapter, "qualified person or entity" means**

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any person or entity that sells, supplies, distributes, manufactures, or refines E85.

Sec. 2. (a) Except as provided in subsection (b), a qualified person or entity is immune from civil liability for personal injury or property damage resulting from a person fueling any vehicle with E85 that is not a flexible fuel vehicle.

(b) This section does not apply:

- (1) to a qualified person or entity that fails to display all E85 warning signs required by federal or state law; or
- (2) if a person's injury or property damage is a direct result of the gross negligence or willful or wanton misconduct of the qualified person or entity.

SECTION 25. An emergency is declared for this act.

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President of the Senate

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President Pro Tempore

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Speaker of the House of Representatives

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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